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trial. *Weeks v. United States*, 232 U. S. 383. And in the principal case the court places its decision on the ground that a court cannot compel the production of papers if the existence thereof has been revealed to the court as a result of information gained from papers unlawfully seized. Since the particular papers seem to have been incriminatory, a simpler ground for the decision seems to be that the privilege of the defendants against self-incrimination would be violated by the order in question. *Boyd v. United States*, 116 U. S. 616.

STATUTE OF FRAUDS — SALES OF GOODS, WARES, AND MERCHANDISE — CHECK AS PART PAYMENT. — The plaintiff made an oral contract with the defendant for the sale of lambs which were worth more than \$50 and gave the defendant a check. There was no agreement that the check should be absolute payment. The defendant repudiated the contract and destroyed the check. The plaintiff sued for damages. The defense was the Statute of Frauds. *Held*, that the contract is unenforceable. *Gay v. Sundquist*, 175 N. W. 190 (S. D.).

Whether a negotiable instrument is given in absolute or in conditional payment of the debt is determined by the intent of the parties. *Ely v. James*, 123 Mass. 36; *McLure v. Sherman*, 70 Fed. 190. In the absence of any express understanding, a negotiable instrument is in most states presumed to be conditional payment; *i. e.*, valid payment, subject to the condition subsequent that if it is not paid when duly presented the old debt revives. *Burkhalter v. Second National Bank*, 42 N. Y. 538; *Holmes v. Briggs*, 131 Pa. St. 233, 18 Atl. 928. In others the presumption is one of absolute payment. *O'Conner v. Hurley*, 147 Mass. 145. As to whether a negotiable instrument is part payment under the Statute of Frauds, in the absence of expressed intent, the presumption of absolute payment seems preferable — giving a negotiable instrument is itself an overt act easily proved. But in a jurisdiction where conditional payment is presumed, if the instrument is duly presented but not paid at maturity, it would seem that the statute is not satisfied. But since part payment must be contemporaneous with the bargain and there is a valid part payment even in these jurisdictions, if the instrument is paid when presented, the condition must be a condition subsequent. *Hunter v. Wetsell*, 84 N. Y. 549; *Case v. Kramer*, 34 Mont. 142, 85 Pac. 878. Accordingly if the drawer stops payment, thus preventing the performance of the condition subsequent, there is a valid part payment. *Hessberg v. Welsh*, 147 N. Y. Supp. 44. The same should be true if the instrument is not duly presented. *Contra*, *Groomer v. McMillan*, 143 Mo. Ap. 612, 128 S. W. 285; *Johnson v. Morrison*, 163 Mich. 322, 128 N. W. 243. Therefore, though in line with the cases just cited, it seems that the principal case cannot be defended on principle, whether the check is presumed to be absolute or conditional payment.

TAXATION — INHERITANCE TAX — COLLECTION AND ENFORCEMENT — PERSONAL ACTION IN ANOTHER STATE AGAINST THE BENEFICIARIES. — A resident of Colorado died in New York leaving no property in Colorado but a great deal of personalty in New York. Colorado served the New York beneficiaries, by publication, with notice of assessment proceedings in a Colorado court which by statute had jurisdiction to proceed as in an action *in rem*. No one appeared, but the court issued its order that the tax had been assessed. The state of Colorado then brought an action in New York against the beneficiaries. The Supreme Court dismissed the complaint. On appeal, *held*, that the judgment be reversed. *Colorado v. Harbeck*, 179 N. Y. Supp., 510 (App. Div.).

For a discussion of this case, see NOTES, p. 840, *supra*.